

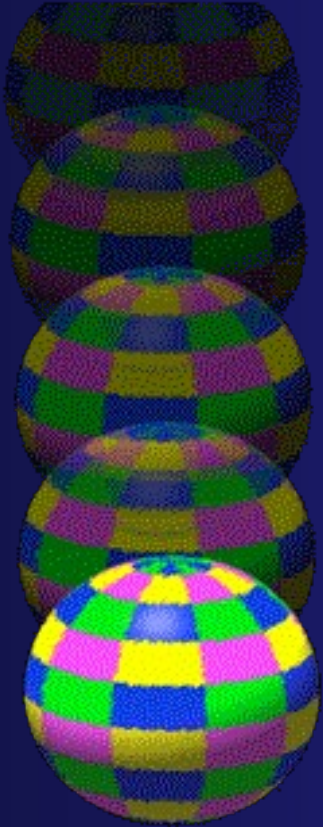
# Production & Deployment

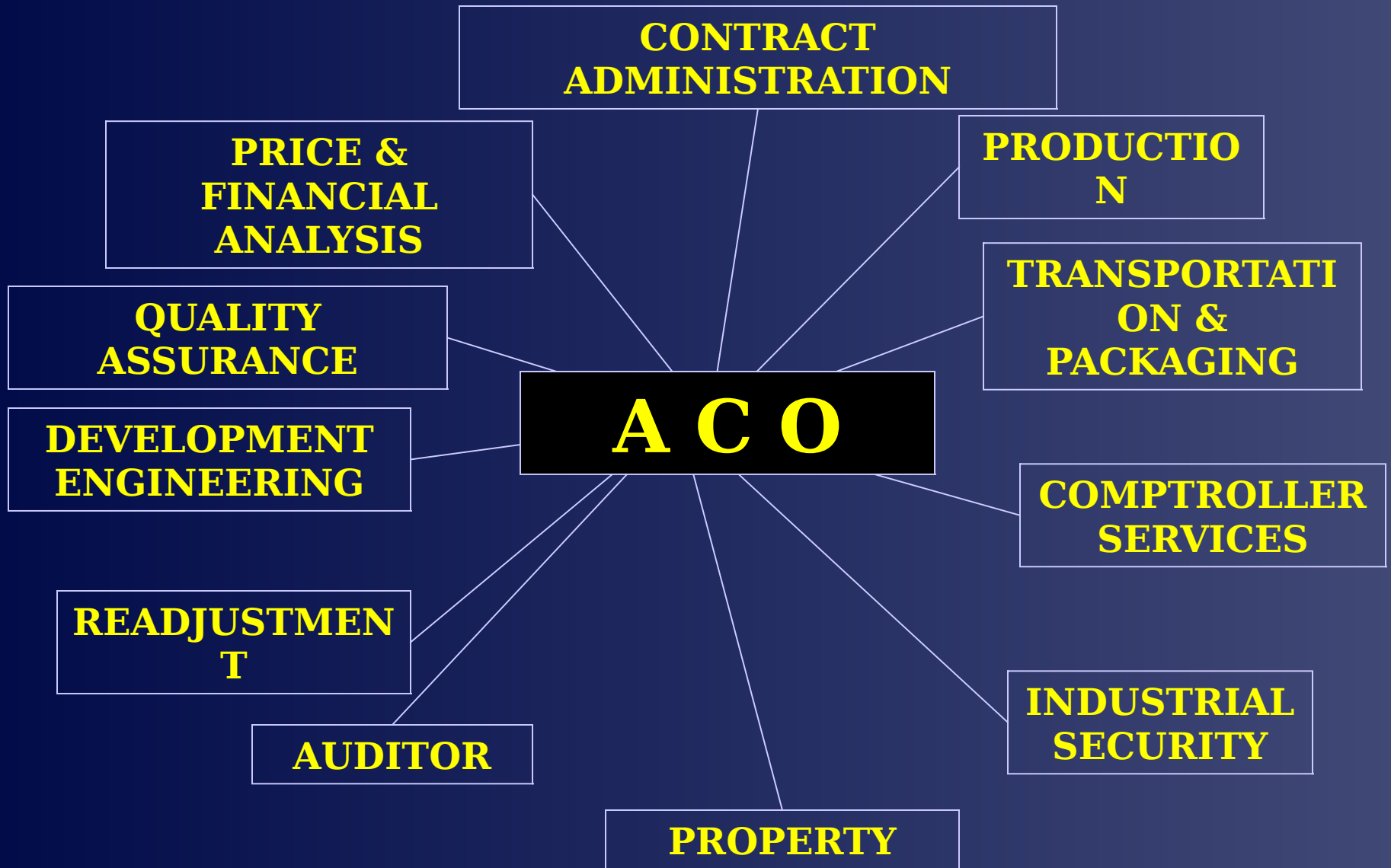




# We Will Cover...

- Contract Administration
- Anti Deficiency
- Ethics
- TINA
- Contract Mods
- Terminations
- Data





# **Contract Administration Key Functions**

- **Program Integrator (PI)**
- **Administrative Contracting Officer (ACO)**
- **Termination Contracting Officer (TCO)**

## **Buying Command**

- **Procuring Contracting Officer (PCO) for Post, Camp and Station**
- **Contracting Officer Representative (COR)**

# **Defense Finance and Accounting Service (DFAS)**

- **Responsible for timely payment of contractors**
- **The Government pays interest if contractor payment is not “timely”**
- **Manages payment on 400,000 contracts per year**
- **Processes 1.4 million invoices annually**

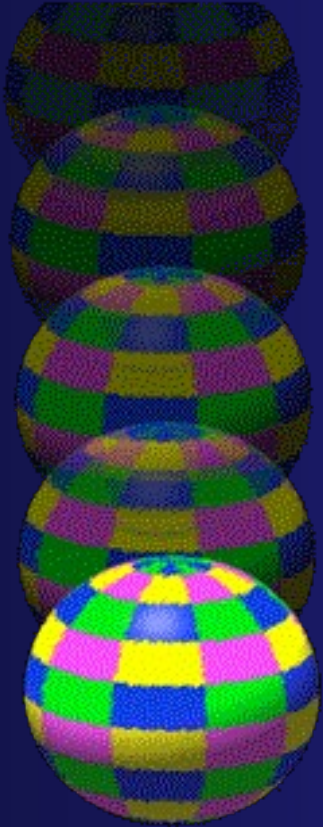


# ANTI-DEFICIENCY ACT

## 31 U.S.C. 1341

**Far 32.702**

**“NO OFFICER OR EMPLOYEE OF  
THE GOVERNMENT MAY CREATE  
OR AUTHORIZE AN OBLIGATION  
IN EXCESS OF THE FUNDS  
AVAILABLE, OR IN ADVANCE OF  
APPROPRIATIONS UNLESS  
OTHERWISE AUTHORIZED BY  
LAW”**



# RATIFICATION OF UNAUTHORIZED COMMITMENTS **FAC 94-33/FAR 1.602-3**

- Agencies required to take positive action to preclude need for ratification.
- Ratification actions approved by HCA - delegation limitation to Chief of Contracting Office

## Ratification Only Under Following Conditions:

1. Supplies/Services Accepted by Govt - Government Benefited.
2. Ratifying Official had Authority to Enter into Commitment at Time Action Taken.
3. Contract would have been Proper if Authorized by C.O.
4. C.O. Review: Price is Fair and Reasonable.
5. C.O. Recommends Payment and Legal Council Concurs.
6. Funds are Available and were Available when Unauthorized Commitment made.
7. Ratification IAW Other Limitations Prescribed by Agency Procedures.

Cases Not Meeting these Criteria - Submit Claim to GAO

# **Government - Prime Contractor and Subcontractor Relationships**

- **“Privity of Contract” is the legal relationship between parties in a contract**
- **Government has “privity of contract” with the Prime Contractor**
- **Prime Contractor has “privity of contract” with the Subcontractor**
- **Government can only influence subcontractor through the prime contractor**

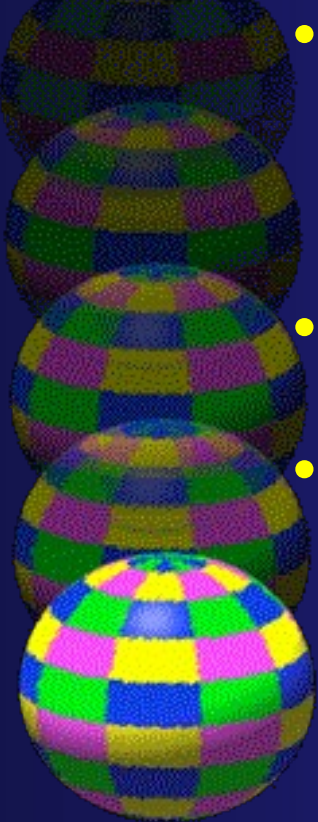


# CONTRACT ADMINISTRATION - SUMMARY

- Key players:
  - DCMC
  - DCAA
  - DFAS
- Privity of Contract between Gov't and prime Kr
- Beware of constructive changes!



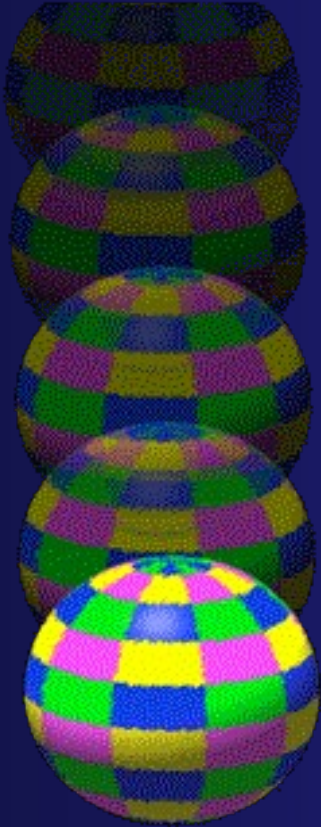
# ETHICS

- 
- Four colorful spheres, each with a different pattern of horizontal stripes in various colors (red, yellow, green, blue, purple), arranged vertically on the left side of the slide.
- THE DISCIPLINE DEALING WITH WHAT IS GOOD AND BAD AND WITH MORAL DUTY AND OBLIGATION
  - A SET OF MORAL PRINCIPLES OR VALUES
  - THE PRINCIPLES OF CONDUCT GOVERNING AN INDIVIDUAL OR A GROUP

YOU HAVE JOINED A "GROUP" THAT MUST OBSERVE CERTAIN STANDARDS OF CONDUCT THAT DO NOT NECESSARILY CORRESPOND TO THE BEHAVIOR THAT WOULD BE ETHICAL UNDER DEFINITIONS 1 AND 2.



# FOR EXAMPLE



- TIME CARDS - TIME CHARGING
- THE PURCHASING SYSTEM
- DEALINGS WITH GOVERNMENT EMPLOYEES
- SECURITY
- GOVERNMENT PROPERTY
- QUALITY - PRODUCT SUBSTITUTION
- COST ESTIMATING

# OPTIONS

## FAR Part 17

**OPTION = A UNILATERAL RIGHT IN CONTRACT, FOR SPECIFIED TIME,**

**GOVERNMENT MAY ELECT TO PURCHASE ADDITIONAL SUPPLIES/SERVICES OR MAY EXTEND THE CONTRACT**

**FAR - CAN'T USE IF:**

**\* GOODS/SERVICES PROCURED "READILY AVAILABLE" ON OPEN MARKET**

**\* FORCES CONTRACTOR TO INCUR "UNDUE RISKS"**

**\* USE OF REQUIREMENTS OR INDEFINITE QUANTITY IS APPROPRIATE**

**\* IT IS LIKELY THAT MARKET PRICE OF GOODS/SERVICES WILL FLUCTUATE**

**SUBSTANTIALLY**

**\* OPTION IS FOR A FIRM REQUIREMENT FOR WHICH FUNDS ARE AVAILABLE**

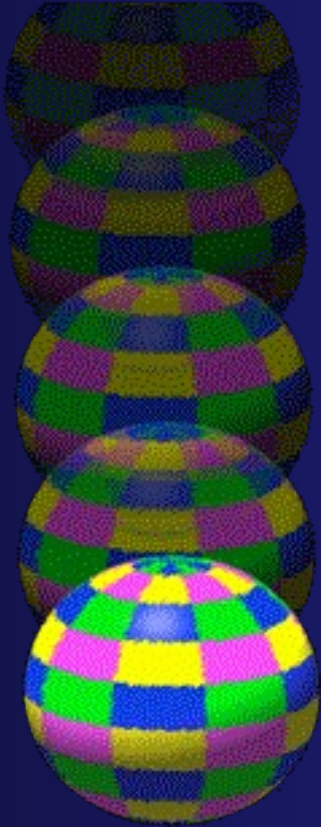
**OPTION CLAUSE**

**PRICE + EXERCISE DATE + QUANTITY +**



# THE TRUTH IN NEGOTIATIONS ACT (TINA)

PESYSTEMS, INC.



## BACKGROUND: HOW THE GOVERNMENT DOES BUSINESS

- THE ACT: PUBLIC LAW (87-653)
- QUESTIONS: (AND ANSWERS?)
- PROPOSAL FILES: HOW TO SURVIVE  
A POST-AWARD AUDIT
- SUMMARY



# THE ACT: PUBLIC LAW 87-653

## IMPACT

- ON THE ESTIMATING SYSTEM
  - *ALL RELEVANT DATA MUST BE DEALT WITH*
- ON THE NEGOTIATION PROCESS
  - *UPDATES REQUIRED*
  - *DOCUMENT RELIANCE (IF YOU CAN)*
- ON THE COMPOSITION AND MAINTENANCE OF PROPOSAL FILES
  - *MUST KEEP DATA WHETHER USED OR NOT*

# THE ACT: PUBLIC LAW 87-653

## ESSENTIAL CHARACTERISTICS

- CONTRACTOR MUST FURNISH COST/PRICE DATA THAT IS:
  - *ACCURATE*
  - *CURRENT*
  - *COMPLETE*

## IN SUPPORT OF HIS PROPOSAL

- CONTRACTOR MUST CERTIFY, AT THE COMPLETION OF NEGOTIATIONS, THAT HE HAS DONE SO
- CONTRACT CLAUSE PERMITS POST AWARD AUDIT AND RECOVERY (PRICE REDUCTION)





# THE ACT:

PESYSTEMS, INC.

## PUBLIC LAW 87-653

### HISTORY

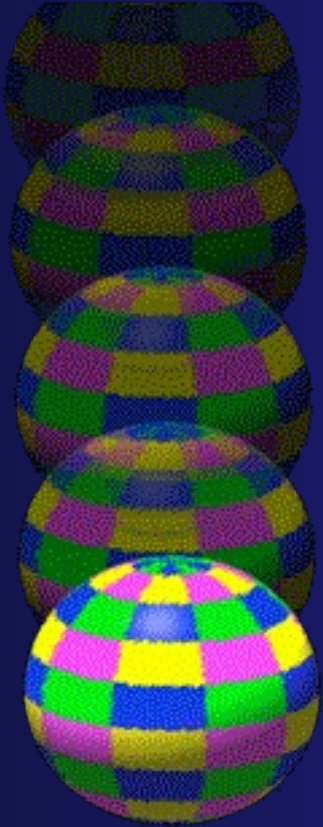
- THE "TRUTH IN NEGOTIATIONS" ACT
  - ***BECAME LAW ON 10 SEPTEMBER 1962***
  - ***IMPLEMENTING REGULATIONS (ASPR) WENT INTO EFFECT IN 1964***
- PURPOSE - TO PUT THE CONTRACTING OFFICER FOR THE GOVERNMENT IN AN EQUIVALENT POSITION TO THE CONTRACTOR NEGOTIATOR
- APPLICATION - CURRENT THRESHOLD IS \$100,000
  - ***NON-PRICE COMPETITIVE PROCUREMENTS***
  - ***PRIMES, SUBS, SUB-SUBS***





# DISCUSSION QUESTIONS: (AND ANSWERS?)

- WHEN DOES AN ESTIMATE BECOME AN ESTIMATE?
- WHAT IS "CURRENT" DATA?
- WHAT ARE "CONTINGENCIES"; WHO APPLIES THEM, AND WHEN?
- WHAT IS "ALL" THE DATA, AND HOW IS IT FURNISHED?
- HOW DO WE DEAL WITH:
  - *HISTORICAL COSTS?*
  - *ACTUAL COSTS?*
  - *OVERHEADS?*
  - *MATERIALS?*
  - *LABOR?*

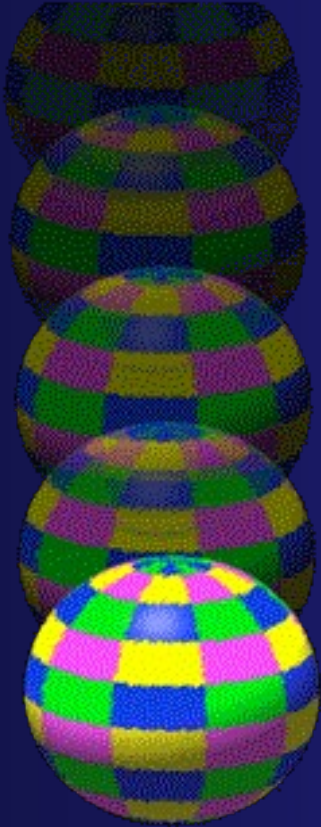




# PROPOSAL FILES:



## HOW TO SURVIVE A POST-AWARD AUDIT



- PROPOSAL INFORMATION
  - *EVERYTHING YOU FURNISHED, WHEN, AND TO WHOM*
  - *WHAT THEY DID WITH IT (IF YOU KNOW)*
- NEGOTIATION NOTES
  - *AUDIT INTERVIEWS*
  - *FACT-FINDING*
  - *NEGOTIATION MINUTES*
- KNOW WHAT YOU HAVE - KNOW WHERE IT IS



# FORMAL CLAIMS

## FAR PART 33



**DEFINITION:** A WRITTEN DEMAND BY ONE OF THE CONTRACTING PARTIES SEEKING, AS A MATTER OF RIGHT, THE PAYMENT OF MONEY, THE ADJUSTMENT OF INTERPRETATION OF CONTRACT TERMS, OR OTHER RELIEF ARISING UNDER A CONTRACT.

**PROCEDURES/REQUIREMENTS ESTABLISHED BY THE**

**CONTRACT DISPUTES ACT 1978**

+ INTEREST

+ CERTIFICATION REQ'D > \$50K

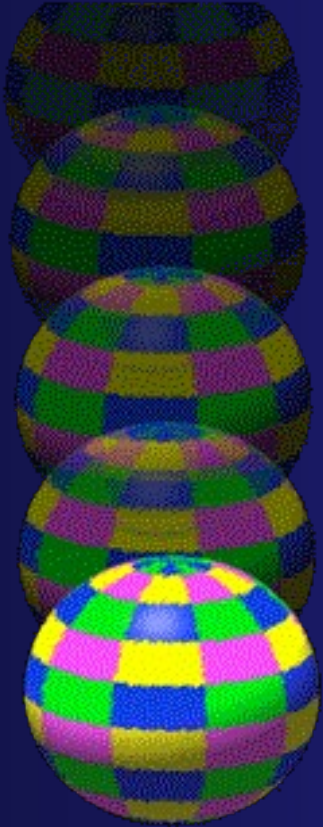
+ OBLIGATION TO CONTINUE

**GOVERNMENT POLICY = RESOLVE ISSUES BY MUTUAL AGREEMENT**



# BUY AMERICAN ACT

## 41 U.S.C. 10

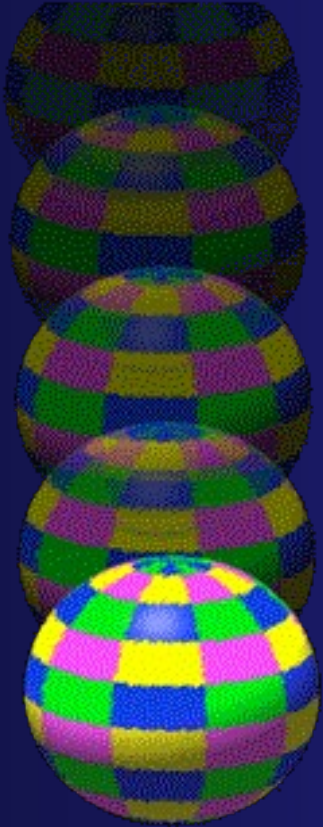


- BUY DOMESTIC END PRODUCTS;  
EXCEPT -
  - *FOR USE OUTSIDE THE U.S.*
  - *UNREASONABLE COST*
    - DOMESTIC MORE THAN 6% ABOVE (LARGE BUS.)
    - DOMESTIC MORE THAN 12% ABOVE (SMALL BUS.)
  - *INCONSISTENT WITH THE PUBLIC INTEREST*
  - *NOT AVAILABLE IN U.S.*
  - *FOR COMMISSARY RESALE*
- 25.108 CONTAINS ACCEPTED ARTICLES
  - *COFFEE, CASHEW NUTS, CHALK, COCOA, ETC.*
- EXCEPTIONS - TRADE AGREEMENTS
  - *CANADA, ISRAEL, AND MANY MORE*



# CONTRACT MODIFICATIONS

- **SUPPLEMENTAL AGREEMENTS**
- **CHANGE ORDERS**
- **TERMINATIONS**
  - *CONVENIENCE*
  - *DEFAULT*
- **ECP'S - CCP'S**
- **SHOW CAUSE - CURE NOTICE**

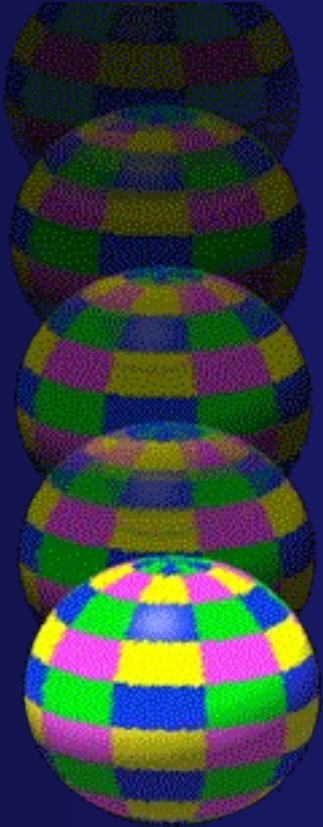






# CONTRACT MODIFICATIONS - CHANGE ORDERS FAR 43

- AUTHORITY - CHANGES CLAUSE
- ONLY PCO OR ACO
- WITHIN GENERAL SCOPE OF CONTRACT
  - *SPECIFICATIONS*
  - *DRAWINGS*
  - *DESIGN*
  - *PACKING*
  - *SHIPMENT*
  - *TIME/PLACE OF DELIVERY*
  - *GOVERNMENT FURNISHED MATERIAL*



# TERMINATIONS

## FAR 49

### \* CONVENIENCE

- CONTRACTOR ENTITLED TO PAYMENT FOR:
  1. COMPLETED SUPPLIES/SERVICES
  2. COSTS INCURRED FOR WIP
  3. COSTS INCURRED FOR SETTLEMENT SUBKTR CLAIMS
  4. SETTLEMENT COSTS, EX. LEGAL, ACCOUNTING, STORAGE, TRANS, ETC.

### \* DEFAULT - CONTRACTOR FAILS TO:

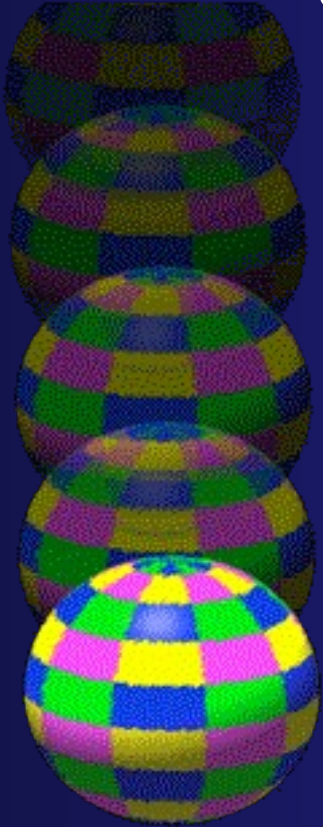
- PERFORM WORK IN K W/I SCHEDULE
- PROSECUTE WORK, ENDANGERS

PERFORMANCE

- CONTRACTOR RESPONSIBLE FOR EXCESS COSTS, ENTITLED TO PAYMENT FOR ALL WORK DELIVERED AND ACCEPTED BY GOVT



# LEGAL ASPECTS OF GOVERNMENT CONTRACTING GOVERNMENT REMEDIES

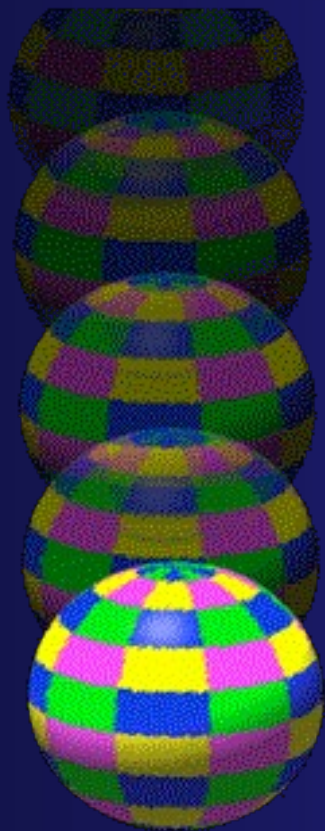


- NEGOTIATE CHANGE
- ISSUE/IMPLEMENT CHANGE ORDER
- SUSPEND OR REDUCE PAYMENTS
- ISSUE STOP WORK ORDER
- TERMINATE PARTIAL / TOTAL
- ISSUE "CURE NOTICE"
- SEND "SHOW CAUSE" LETTER
- TERMINATE FOR DEFAULT
- OFF-SET
- LIQUIDATED DAMAGES
- FILE CLAIM
- DEBAR AND/OR SUSPEND CONTRACTOR
- PROSECUTE CIVIL / CRIMINAL





# CONTRACTOR REMEDIES



- CONTRACTING OFFICER
- APPEALS BOARD ASBCA/GSBCA
- ALTERNATE DISPUTES RESOLUTION
- COURTS: FEDERAL
  - *(USDC, CT of CLAIMS, CT of APPEALS, USSC)*
- P.L. 85-804 - CONTRACT ADJUSTMENT BOARD
- CONGRESS - PRIVATE BILL
- GAO - COMPTROLLER GENERAL (PRE-AWARD)

# FREEDOM OF INFORMATION ACT -

## U.S.C. 552

### **FAR Part 24**

INFO TO PUBLIC: - FEDERAL REGISTER  
- OPPORTUNITY TO READ COPY RECORDS  
- PROVIDE COPY UPON REQUEST

#### **EXEMPTIONS TO RELEASE**

1. RECORDS PROPERLY AND CURRENTLY CLASSIFIED
2. INTERNAL AGENCY PERSONNEL RULES PRACTICED
3. STATUTE SPECIFICALLY EXEMPTS DISCLOSURE
4. **RECORDS CONTAINING TRADE SECRETS OR PROPRIETARY  
COMMERCIAL OR FINANCIAL INFORMATION**
5. INTERAGENCY MEMOS, LETTERS NOT ROUTINELY AVAILABLE TO  
A PARTY IN LITIGATION WITH AGENCY
6. PERSONNEL AND MEDICAL FILES
7. RECORDS OF INVESTIGATION COMPLIED FOR ENFORCING  
CIVIL, CRIMINAL, OR MILITARY LAW
8. RECORDS RELATING TO EXAMINATION, OPERATING OR  
CONDITION OF AGENCY RESPONSIBLE FOR REGULATING OR  
SUPERVISING FINANCIAL INSTITUTIONS



# PATENTS

## FAR 27

- PATENTS = GRANT MADE BY GOVERNMENT TO AN INVENTOR, ASSURING THE SOLE RIGHT TO MAKE USE AND SELL INVENTION FOR CERTAIN PERIOD OF TIME
  - SOURCE U.S. CONSTITUTION
    - GOVT OBJECTIVE:  
**BALANCE GOVT NEED + CONTRACTORS ECONOMIC INTEREST**
  - GOVT CONTRACT CLAUSES:
    - *AUTHORIZATION AND CONSENT*
    - *INDEMNITY*
    - *NOTICE AND ASSISTANCE*
    - *PATENT RIGHTS*
  - RELATED ISSUE:
    - *TRADE SECRETS*



# RIGHTS IN DATA

## FAR 27

PESYSTEMS, INC.

- END PRODUCT OF R&D
- WITHHOLDING PAYMENTS
- COMPETITIVE ADVANTAGE
- RE-PROCUREMENT
- DELIVERY
- CLASSIFICATION
- MARKING
- O & M

**GOVT OBJECTIVE:** OBTAIN JUST ENOUGH DATA FOR NEEDS WHILE PROTECTING INTERESTS OF INDUSTRY

**GOVT RIGHTS IN DATA - TEST - WHO PAID FOR DEVELOPMENT COSTS?**

### CONTRACT CLAUSES:

#### • RIGHTS IN DATA GENERAL

• GOVT "UNLIMITED RIGHTS" \* CONTRACTOR \* RESPONSIBILITIES

#### • RIGHTS IN TECHNICAL DATA

• UNLIMITED \* GOVT PURPOSE LICENSE \*

# **COPYRIGHT**

## **FAR 27**

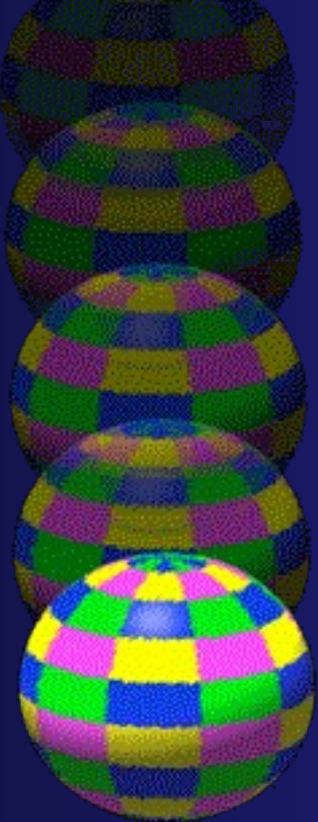
- **COPYRIGHT GRANT OF MONOPOLY TO CREATOR EXCLUSIVE RIGHT TO PRINT, REPRINT, PUBLISH, COPY, AND SELL WORK**
- **PROTECTED BY STATUTE LIFE OF CREATOR PLUS 50 YEARS**
- **TEST IS MEASURE OF COMMERCIAL HARM SUFFERED BY CREATOR**

### **GOVERNMENT POLICY**

- **AVOID LIABILITY**
- **RESPECT RIGHTS**
- **ROYALTY FREE USE IF GOVT PAID FOR DEVELOPMENT**



# THE GOVERNMENT AS A CUSTOMER

- 
- Four colorful spheres, each with a different pattern of horizontal stripes in various colors (red, green, blue, yellow, purple, etc.), arranged vertically on the left side of the slide.
- THE “PROCESS” IS AS IMPORTANT AS THE “PRODUCT”
  - THE “PROCESS” IS INSPECTED, REVIEWED, ANALYZED, AND TESTED AS MUCH, OR MORE, THAN THE PRODUCT
  - VIOLATIONS OF THE PROCESS ARE OFTEN “CRIMES”

SO

THE DEFENSE INDUSTRY MUST COMPLY WITH THE “PROCESS” AND VIGOROUSLY ENFORCE THE RULES GOVERNING THE PROCESS





# SUMMARY

**"WE HAVE MET THE ENEMY AND THEY IS US"**

**- WALT KELLY**

**"SOMETIMES RIGHT IS JUST AS WRONG AS  
WRONG IS"**

**- DONNA FARGO**

**"WE CAN AGREE ON THE FUTURE,  
WE JUST CAN'T AGREE ON THE PAST"**

**- RALPH STANGL**

**"KNOW THE PROCEDURES,  
UNDERSTAND THE PEOPLE"**

**- TOM BAHAN**



# Outline

- Acquisition Environment and Process Overview
- Marketers, Business Development, and the Action Officer
- Requirements Generation Process
- Contracting
- Financial Management:
  - *Cost Estimation*
  - *PPBS/Resource allocation*
  - *Program/Budget Execution*
- Program Execution
- Production & Deployment
- System Upgrades/ Modifications

